IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 28111 of 2007(V)

I.A.1275/07 IN OS.83/2001 of M.C.,PARAPPANANGADI
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PETITIONER:

PALLIYALIL KUNHIMUHAMMED,
S/O.KUNHALIVI, AGED 66 YEARS,
ARIYALLUR AMSOM DESOM, THIRURANGADI TALUK.

BY ADV. SRI.T.H.ABDUL AZEEZ
SRI.M.AHAMED KUNJU

RESPONDENT:

MANGATTU MAMPURATH SHAMSUDHEEN,
S/O.MOIDEEN KUTTY, ARIYALLUR AMSOM DESOM,
TIRURANGADI TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/09/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 28111 OF 2007

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Dated this the 20th day of September, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P4 order whereby the Court had issued a Commission for inspection of the property. The first defendant who is aggrieved by the said order has challenged the same in this writ petition. This case has already a chequered career and only as per an order by this Court the matter was restored back and thereafter the plaintiff has filed a petition for issuance of a Commission for noting down certain particulars. I am informed that the original suit was moved in a vacation Court and the District Judge appointed a Commissioner who had submitted a report in the matter. Now, the matter is pending before the Munsiff Court and it may not be practically possible for that Court to get the very same Commissioner. Further, fresh Commission is ordered after a period of six years and there may be significance and

relevance for the particulars that prevail on the date of suit. I am conscious of the fact that this Court had deprecated the practice of issuing successive Commissions in a case. But in certain cases it becomes unavoidable on account of certain exigencies. Now what the plaintiff wants is to know the extent and other particulars regarding the property. The suit is one for setting aside a document as well. I think the issuance of a Commission will in no way prejudice the present writ petitioner. Therefore, I am not inclined to interfere with the order passed by the learned Munsiff in issuing the Commission. I am informed that the Commissioner is to inspect the property day after tomorrow. An opportunity must also be given to the writ petitioner to file a work memo before the Commissioner for noting the particulars. So in order to enable him to do so I direct the lower Court to defer the inspection of the Commissioner by three weeks. It is further made clear that just because a second Commissioner is appointed the facts and particulars

noted by the first Commissioner need not be brushed aside by the Court if they are convincingly proved and cogently established.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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